



By email response@hkex.com.hk
Hong Kong Exchanges and Clearing Limited
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8 Connaught Place
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Re: **Corporate WVR CP**

1 May 2020

Dear Sirs

Consultation Paper - Corporate WVR Beneficiaries (January 2020) (“Consultation Paper”)

We refer to the Consultation Paper and the Exchange’s proposal to allow corporate entities to benefit from weighted voting rights (WVR) (“**Proposals**”). In response to the Exchange’s invitation for comments, on behalf of the Hong Kong Women Professional and Entrepreneurs Association (“**HKWPEA**”), we set out our comments below.

As a non-profit organization representing local women professionals and entrepreneurs, HKWPEA is aware of the importance of Hong Kong’s hard-earned position as an international financial centre. Over the last 23 years, HKWPEA strives to make timely responses to consultation by the HKSAR government and regulators and invited members to express views. The views expressed in this submission are those of HKWPEA, based on consultation with members who gave input and views on the Proposals, which include women professionals, business executives and entrepreneurs.

We note that the Exchange’s WVR proposals were designed to attract innovative companies to Hong Kong, adding diversity to the types of businesses listed on the Exchange otherwise dominated by financial services and property companies. We agree that a corporate entity (“**Corporate WVR Beneficiary**”) may serve as an ecosystem leader capable of providing strategy, vision, leadership, and a powerful platform on which innovative companies can develop and succeed. We also understand that the continuation of the ecosystem leader’s ability to have an influence on the business direction of the innovative companies will underpin the leader’s interest in the innovative company. As the innovative company grows and looks to an IPO, it is understandable that the ecosystem leader which has been the supporting force for the innovative company would want its influence continue to be significant and that its investment is more valuable than those who have made a pure financial investment, and that such added value should be reflected by the ability to hold shares with weighted voting rights.

To give disproportionate voting rights to the ecosystem leader, however, requires corresponding safeguards, restrictions in WVR power and corporate governance protection requirements. These have to be balanced against the need for Hong Kong to be competitive against other international markets in attracting innovative companies to list on the Exchange.

Opinions expressed by members on this Consultation were not unified with no clear majority view, indicating the challenges which were felt to exist with the Proposals.

Whilst it was generally agreed that there was no outright objection to the principle of permitting Corporate WVR Beneficiaries as such, reservations were expressed concerning: (i) whether it is now

an appropriate time to implement the Proposals and (ii) whether the safeguards proposed required more deliberation.

Reservations Expressed regarding the Proposals

Concerning (i), it was noted that:

- the rules allowing individual WVR beneficiaries have only been in place for a short period of time in Hong Kong, more time should be allowed to pass before rules for corporate WVR beneficiaries are introduced. Although it has not been reported that companies listed in Hong Kong which have an individual WVR beneficiary structure have suffered any adverse impact on their business performance, it must be noted that the history of such structures present in Hong Kong listed companies is very short and the number of companies having such structures forms too small a data pool from which to draw conclusive findings; and
- the Proposals need to address more thoroughly, before implementing any rules, issues of change of control of a Corporate WVR Beneficiary and its impact on all securities-related regulations. A change of control of a Corporate WVR Beneficiary may bring about greatly altered strategies and vision of the Corporate WVR Beneficiary and such changes will impact onto the listed company in which such WVR are held.

Concerning (ii), it was noted that:

- whilst a range of safeguards have been suggested to address investor protection concerns at the initial stage, when the innovative company with a WVR structure is seeking an IPO and the Exchange can exercise its role to allow or disallow a listing application, it appears that the ongoing assurance of minority protection is left to corporate governance committee of the WVR issuer. However, this gatekeeping function requires the corporate governance committee simply to make enquiries with the executive board etc and to make a determination that they are not aware of any circumstances which would warrant the WVR to be terminated. If the corporate governance committee were misled in this regard and the WVR should have been terminated, there are no further measures to deal with this underlying issue. It is therefore proposed that there should be full and fair disclosure in the annual report of the listing applicant by the Corporate WVR Beneficiary and the board of the listing applicant, both of which should sign off on details of positive contributions made by the Corporate WVR Beneficiary in the period covered by the annual report;
- in addition, if there is material disruption or suspension of the Corporate WVR Beneficiary's inclusion of the innovative company in its overall vision and planning for the ecosystem the Exchange needs to consider if there should there be a need to wait 12 months before terminating the WVR rights;
- there appears to be a need to consider whether there can be any preventive measures against abuse of WVR, and how minorities are protected in such circumstances;
- the Exchange should address the issue of risks that those who hold relatively small ownership interests using voting control to change corporate governance rules to the detriment of non-controlling shareholders;

- sunset clause – this provision requires some consideration as to whether it is to commence from the joining of the innovation company into the ecosystem of the Corporate WVR Beneficiary. In particular, since it is proposed that the Corporate WVR Beneficiary should have had a material involvement in the innovative company/ listing applicant for at least two years, that two-year period should be counted in the sunset period.

Views expressed in Support of the Proposals

Views which support the implementation of the Proposals and the safeguards suggested therein. Such views are that now is the time to change the rules in Hong Kong to build an enhanced platform which encourages rather than discourages innovative companies to look to Hong Kong as a capital-raising centre. The global economy is undergoing a dramatic shift – whereas venture capital investors may have found it relatively easy to raise money from private investors without necessarily tapping the public market for funds, various factors such as a global epidemic, nationalism, trade war are changing that landscape so that it may be necessary to look to the public market for fund injection. Against such changes, it is important that Hong Kong, which is already behind in this regard, should not fall back any further. Those who support for the Proposals believe that now is the time to implement changes in our rules so that the Hong Kong market has the legal and regulatory framework in place when opportunities arise.

It is also believed that there must be diversity in the types of businesses, especially innovative companies, which are able to raise capital in Hong Kong. Hong Kong as an international financial centre has many inherent issues such as the high cost of living and property costs which place it at a disadvantage in encouraging businesses from establishing a presence locally. However, Hong Kong has a strong financial services industry and professional services industry, and these advantages should be used. We must provide innovative companies with the means and the platform on which they can raise capital and grow and we can only achieve this by being forward-looking.

The following views have been expressed:

- If a Corporate WVR Beneficiary is instrumental in supporting the growth and development of the listing applicant, then it is important that it maintains a relatively significant control/ influence during the track record period, although the economic interest of the Corporate WVR Beneficiary in the share capital of the listing applicant does not necessarily need to be 30% during the track record period. It is suggested that the economic interest of the Corporate WVR Beneficiary in the share capital of the listing applicant should be at least 20% in the track record period.
- To prevent the qualification from being over-restrictive, it should not be necessary for a Corporate WVR Beneficiary to be listed on a Qualifying Exchange (if it is not listed on the Hong Kong Stock Exchange). It must however can be demonstrated to have experience in supporting startups and are managing a portfolio which forms a good ecosystem and there can be demonstrated a uniqueness in the strategic value-add.

Notwithstanding such support, attention must be paid to the following issues in particular:

- Connected transactions: A Corporate WVR Beneficiary should be deemed to be connected to the listed issuer by the Exchange; and consideration may be given to whether the connection should only be regarded as ceasing after a “cooling-off period” (in the same manner as the Listing Rules considers the independence of INEDs).

- Disclosure of interests – the Exchange should consider how voting power is calculated when shares with WVR are held by a person as an individual WVR Beneficiary and through a Corporate WVR Beneficiary. The Exchange should also consider enhanced disclosure requirements such that complex share structures are clearly explained to investors so that non-controlling shareholders can understand with precision the extent to which the economic interest of the Corporate WVR Beneficiary is held. All publicly released results and reports of companies with WVR should clearly disclose and tabulate the numerical relationship between the amount of share capital or its equivalent economic interest held by any Corporate WVR Beneficiary or individual WVR beneficiary and the voting rights held or controlled by them.
- Disclosure of Risks – the Exchange should consider requiring the appropriate method and platform for a prominent disclosure of the risks of investing in companies with WVR structure, whether at IPO stage or thereafter.
- Prevention of alteration to governance structures – beneficiaries of WVR should not be able to alter governance structures which potentially pose a conflict of interest between them and non-controlling shareholders.
- Certain matters reserved for one-share-one-vote - To further reduce risks and better protect non-controlling stakeholders, certain key matters should be decided on a one-share-one-vote basis, with WVR beneficiaries prohibited from exercising their WVRs on these matters. Examples of key matters include:
 - changes to the issue's constitutional documents;
 - the appointment or removal of an independent non-executive director;
 - the appointment or removal of auditors;
 - the issuance of new shares;
 - the buy-back of existing shares,

some of which mirror similar requirements for individual WVR beneficiaries;
- Period of contribution prior to IPO – a longer period is suggested for strategic Corporate WVR Beneficiaries;
- Corporate WVR Beneficiary's shares should lapse if it fails to maintain at least a 30% economic interest – the Exchange should consider the ability of the Corporate WVR to fulfil this requirement if the listing applicant chooses to raise money by share placements post-listing,
- Demonstration of uniqueness – the Corporate WVR Beneficiary must demonstrate the uniqueness of its contribution – financial investment into innovative companies is insufficient.
- Exclusivity - the Listing Applicant should be the only company in the same sector enjoying the Contribution from Corporate WVR Beneficiary.
- Alteration of constitutional documents – any amendments of constitutional documents should be voted on a one-share one-vote basis, and requiring at least $\frac{3}{4}$ votes in favour (a special resolution under the Companies Ordinance).
- The Exchange must be able to undertake an ongoing comparison of the performance of companies with and without Corporate WVRs.



Hong Kong
Women Professionals
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Should you have any questions, please feel free to contact Julianne Doe, Co-Chair, Public Affairs Committee at 61984602 or info@hkwpea.org.

Yours faithfully

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For and on behalf of

Hong Kong Women Professionals & Entrepreneurs Association